IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10580 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOHARLAL UDAYRAM KHATIK

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

Mr.Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/01/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged the order of detention dated 3.10.2002. Along with the detention order, the petitioner was served

with the grounds of detention. It is alleged against the petitioner that he is unauthorisedly keeping quantity of blue kerosene for the purpose of selling it illegally. It is found that, even though the petitioner is not entitled to deal with blue kerosene, he illegally obtained the quantity of the same, and, ultimately, after inspection, the Department seized 1100 litres of blue kerosene from him. The petitioner has even admitted the aforesaid illegality on his part, as mentioned in the detention order itself. The detenu has challenged the detention orer on various grounds.

At the time of hearing of this petition, Mr.Prajapati, learned Advocate for the petitioner, submitted that, even though the incident in question had taken place on 17.5.2002, and even though the petitioner had admitted his guilt before the Officers on the relevant day, yet the order of detention is passed after a long passage of time, i.e. on 3.10.2002. He submitted that no reasonable explanation is given for such delay. When a person is required to be detained under preventive detention, prompt action is expected from the Department so that the purpose of detaining a person is achieved.

Mr.Pancholi, learned AGP, however, has tried to defend the said detention order. He submitted that FSL report was not available earlier, and, ultimately, the same was available on 4.9.2002, and, therafter, the detention order was passed on 3.10.2002.

In Special Civil Application No.78 of 2000, decided on 16.3.2000, this Court has held as under :-

> " ... ...
>
> 6.1 So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit-in-reply. In paragraph 11 of this affidavit-in-reply, the detaining authority states as under :-
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> " I say that it is true that inspection of shop was carried on 11.8.1999 and order of detention is passed on 13.12.1999, but at the same time, live-link is not snapped and it cannot be said that stale

incidents are considered for the purpose of passing of the order of detention.

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry / Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed.

... ..."

It is required to be noted that, in the instant case, even after the FSL report was available, there is a delay of about one month even in passing the order and, even otherwise, it was not necessary for the Department to wait till the FSL report is available, as, immediate preventive action was required to be taken against the petitioner, so that he may not carry on his activity any further. There is no explanation for the delay at the second stage, i.e. delay occasioned from the date of receiving the report from the FSL till the passing of the order of detention.

Under the above circumstances, this petition is required to be allowed and it is accordingly allowed.

The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

23rd January, 2003 (P.B. Majmudar, J.)

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(apj)